

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

CRL.A.No. 193 of 2001()

STA.2019/1997 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

APPELLANT:

EAST KALLADA GRAMA PANCHAYAT,
REPRESENTED BY THE SECRETARY
A.YESUDASAN,
S/O.ALFONSE,
EAST KALLADA (P.O.)
KOLLAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

1. P.RAJESH
THENGUVILA VEEDU,
KUMBALAM,
PERAYAM GRAMA PANCHAYAT,
PERAYAM, KOLLAM.
2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)
PUBLIC PROSECUTOR, SRI THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M.JAMES, J.

Crl.A No. 193 of 2001 (A)

Dated this the 26th day of February, 2007

J U D G M E N T

A complaint was preferred by the Secretary, East Kallada Grama Panchayat, in S.T.No.2019/1997, against the first respondent, the accused, who defaulted the payment of Rs.28,856/-, for bidding in public auction, the conducting of meat stall of the panchayat. Therefore, the first respondent was proceeded against. An attachment could not be executed by PW.2, the Peon of the Panchayat, as it was found to be impracticable. Though the existence of the documents relating to the transactions was admitted by PWs.1 and 2, the Secretary and Peon, the same had not been produced before the learned Magistrate. Even after closing the evidence, on the prayer of the appellant, the entire matter was reopened and an opportunity was given to the appellant to produce further evidence. But the same was not done. Therefore, the court below found the first respondent-accused not guilty, as the

appellant failed to prove the guilt of the accused. The same is under challenge through this appeal.

2. The counsel for the appellant produced before me judgment, dated 30/06/2006, in Crl.A.No.125/2001, in which there was another case between the same parties. The facts in that appeal show that the evidence was reopened on application and on payment of cost of Rs.150/-. But despite giving repeated opportunities by the learned Magistrate, the Secretary did not appear, as he was engaged on duty, conducting election. But after giving three postings, the learned Magistrate closed the matter and acquitted the accused. This Court interfering the order of acquittal, gave another opportunity for adducing evidence. The same is now shown as a precedent.

3. However, in the case at hand, though the counsel plead that the application to re-open the evidence was allowed on payment of cost Rs.150/-, at the first instance, and Rs.100/-, at the second instance, the Peon had not appeared before the court below and no documents were also produced. Hence, the facts in this case are different. The counsel prayed for issuing summons to the witness. If the summons is to be

issued to a witness, there should be a prayer for the same, in the required form and also paying the fee for the issuance of the summons. I do not find any material before me to show that such steps have been taken by the appellant, before the court below.

4. Nothing prevented the appellant from producing documents, atleast at the time of filing of this appeal. It is only to drag the matter and disrupt the judicial work, that the appellant is playing this game. All the documents should have been produced at the time of filing of the complaint and witnesses should have been produced when the matter was posted for adducing evidence. This piece meal act of the appellant disturbs the judicial work of the court.

5. Nevertheless, in order to do justice to the Panchayat, I give an opportunity so that the documents could be produced. Because of the inaction on the part of the concerned secretary or the peon, there should not be any loss to the local panchayat. Therefore, I set aside the impugned judgment of the court below dated 05/09/2000, and I restore C.C.No.2019/97 to the file of Judicial Magistrate of the First Class Court-I, Kollam.

6. The parties shall appear before the court below on 28/03/2007. This matter being very old, of the year 1997, I direct the learned Magistrate to dispose of the same within three months from the date of appearance of the parties.

This appeal is allowed as above.

(J.M.JAMES)
Judge

ms

J.M.JAMES, J.

Crl.A No. 193 of 2001 (A)

J U D G M E N T

26th February, 2007